

2-2403-8995-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PRIVATE DETECTIVE AND PROTECTIVE AGENT SERVICES BOARD

Arthur Ray VanBuren, Individual
Protective Agent Licenseholder 179,

v.

Minnesota Private Detective and
Protective Agent Services Board.

ORDER ON MOTION FOR
SUMMARY DISPOSITION

By written motion filed with the Administrative Law Judge on August 25, 1994, the Private Detective and Protective Agent Services Board sought an Order of the Administrative Law Judge granting summary disposition in the above-captioned matter. The request for summary disposition was served on Arthur Ray VanBuren by first class mail on August 23, 1994. The Administrative Law Judge on August 26, 1994, directed a personal letter to Arthur Ray VanBuren at his last known address, advising him of the position taken by the Board and stating that he had until September 7, 1994, to file a response to the motion for summary disposition. In the letter dated August 26, 1994, the Administrative Law Judge specifically stated that if no response was received from Mr. VanBuren, summary disposition would be recommended to the Board as the final disposition of this case. On September 8, 1994, Mr. VanBuren filed a response to the motion for summary disposition with the Administrative Law Judge. The response states that Mr. VanBuren is appealing his criminal conviction.

The record on the motion closed on September 8, 1994, the day of receipt by the Administrative Law Judge of Mr. VanBuren's response to the motion.

This Report is a recommendation, not a final decision. The Minnesota Private Detective and Protective Agent Services Board will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Board shall not be made until

this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Marie Ohman, Executive Director, Minnesota Private Detective and Protective Agent Services Board, 1246 University Avenue, St. Paul, Minnesota 55104, to ascertain the procedure for filing exceptions or presenting argument.

Based upon motion and accompanying documentation and the response of Mr. VanBuren, and on all the files and records herein, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS THE RECOMMENDATION of the Administrative Law Judge to the Private Detective and Protective Agent Services Board that summary disposition against Mr. Arthur Ray VanBuren, Individual Protective Agent Licenseholder No. 179, in all respects, GRANTED, and that the said license be revoked.

Dated this 15th day of September, 1994.

/s/ Bruce D. Campbell

BRUCE D. CAMPBELL

Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: No Hearing Held.

MEMORANDUM

Licenseholder Arthur Ray VanBuren has been convicted of criminal sexual conduct in the first degree, a felony. The record contains the certificate of conviction or judgment which indicates that the Licensee was in fact convicted of felony first degree criminal sexual conduct and prostitution on January 1, 1994. Under Minn. Stat. § 326.3381, subd. 3 (1992), a person may not hold a protective agent license in the State of Minnesota who has been convicted of a felony by a Minnesota court or a state or federal court. In response to a specific directive by the Administrative Law Judge, Mr. VanBuren admits the conviction, but states that an appeal is pending. For the reasons hereinafter stated, the Administrative Law Judge determines that summary disposition is appropriate.

A request for summary disposition should be granted when there is no genuine issue as to any material fact and one party is entitled to a favorable decision as a matter of law. Minnesota Rule of Civil Procedure, Rule 56.03

Minn. Rules, pt. 1400.5500 K (1991). A material fact is one which is substantial and will affect the result or outcome of the proceeding, depending on the determination of that fact. Highland Chateau v. Minnesota Department of Public Welfare, 356 N.W.2d 804 (Minn. App. 1984), rev. den, February 6, 1985. In considering a motion for summary disposition, the evidence must be viewed in the light most favorable to the nonmoving party. Grondahl v. Bulluck, 318 N.W.2d 240 (Minn. 1981); Nord v. Herried, 305 N.W.2d 337 (Minn. 1981); American Druggists Institute v. Thompson Lumber Co., 349 N.W.2d 569 (Minn. 1989).

With a motion for summary disposition, the initial burden is on the moving party to show facts establishing a prima facie case for the absence of material facts at issue. Thiele v. Stich, 425 N.W.2d 580, 583 (Minn. 1988). Once the moving party has established a prima facie case, the burden shifts to the nonmoving party. Minnesota Mutual Fire & Casualty Company v. Retrum, 456 N.W.2d 719, 723 (Minn. App. 1990). To resist a motion for summary disposition, the nonmoving party must show that there are specific facts in dispute which have a bearing on the outcome of the case. Hunt v. IBM Mid-America Employees Federal, 384 N.W.2d 853, 855 (Minn. 1986). The nonmoving party may not rely on general assertions; significant probative evidence must be offered. Minnesota Rules of Civil Procedure, Rule 56.05; Carlisle v. City of Minneapolis, 437 N.W.2d 712, 715 (Minn. App. 1989); Celotex Corp. v. Catrett, 477 N.W. 317, 323 (1986). The evidence introduced to defeat a summary disposition motion must not be admissible at trial, however, Carlisle, 437 N.W.2d at 715, citing Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

The judicial decisions are numerous that, when faced with a motion for summary disposition, the motion must be opposed with significant probative evidence of specific material facts in dispute. Bob Useldinger & Sons, Inc. v. Hangsleben, 505 N.W.2d 323 (Minn. 1993); Lundgren v. Eustermann, 370 N.W.2d 877 (Minn. 1985); Lamont v. Minnesota Department of Employee Relations, 495 N.W.2d 11 (Minn. App. 1993). General Casualty Co. of Wisconsin v. Mid-Continent Agencies, Inc., 485 N.W.2d 147, rev. den; Johnson v. Van Blaricon, 480 N.W.2d 138 (Minn. App. 1992); Phillips-Klein Companies, Inc. v. Tiffany Partnership, 474 N.W.2d 370 (Minn. App. 1991); Kletschka v. Abbott-Northwestern Hospital, Inc., 417 N.W.2d 752, rev. den; Bush v. City of Lakefield, 399 N.W.2d 169 (Minn. App. 1987), rev. den; National Farmers Union Property & Casualty v. Henderson, 372 N.W.2d 71 (Minn. App. 1985); and Alexander Construction Co., Inc. v. C & H Contracting, Inc., 354 N.W.2d 535 (Minn. App. 1984). A mere statement of conclusions unsupported by allegations of fact or mere conclusory denials are not sufficient to oppose successfully a motion for summary disposition. Johnson v. Van Blaricon, 480 N.W.2d 138, 140 (Minn. App. 1992); Gutwein v. Edwards, 419 N.W.2d 809 (Minn. App. 1988); Nowicki v. Benson Properties, 402 N.W.2d 205 (Minn. App. 1987); Grand Northern, Inc. v. West Mall Partnership, 359 N.W.2d 41 (Minn. App. 1984); Alexander Construction Co., Inc. v. C & H Contracting, Inc., 354 N.W.2d 535 (Minn. App. 1984).

The only fact raised by Mr. VanBuren in his letter of September 8, 1994, is the pendency of an appeal of his conviction to the Minnesota Court of Appeals. One is "convicted" of a felony, however, when the judgment of conviction is entered and, certainly, when the sentence is being carried out. Crawford v. U.S., 41 F.2d 979, 980 (D.C. Cir. 1930); Commonwealth v. Minnich, 250 Pa. 309, 95 A. 565 (1915); Delta Truck Brokers, Inc. v. King, 142 So.2d 273, 275 (Fla. 1962); People v. Harvey, 918 P.2d 1087, 1088 (Colo. App. 1991). Absent an

appropriate stay of the criminal judgment of conviction, the pendency of an appeal does not affect the fact of conviction for purposes of the statute. People v. Clapp, 67 Cal. App.2d 197, 153 P.2d 758 (1944); Ritter v. Democratic Press Co., 68 Mo. 461 (18--); Hackett v. Freeman, 103 Iowa 296, N.W. 528 (1897); Alabama Ins. Dept. v. Shaw, 594 So.2d 112, 113 (Ala. Civ. 1991); Lewis v. Exxon Corp., 716 F.2d 1398, 1399 (D.C. Cir. 1983); State ex. inf. Peach v. Gains, 575 S.W.2d 175, 181 (Mo. 1978); Campbell v. State, Ark. 570, 781 S.W.2d 14 (1989); State ex rel. Zempel v. Twitchell, 59 Wash. 419, 367 P.2d 985, 991 (1962).

The Administrative Law Judge, therefore, finds that the only fact raised by Mr. VanBuren is not material. Its truth or falsity will not affect the outcome of the proceeding. Highland Chateau v. Minnesota Department of Public Welfare, supra. Because the law is clear that conviction of a felony disqualifies Mr. VanBuren from holding a protective agent license, it is appropriate that the Board grant summary disposition and, on the basis of the existing record on the motion for summary disposition, revoke the protective agent license of Arthur Ray VanBuren.

B.D.C.

